



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R05-OAR-2023-0283; FRL-11127-01-R5]**

**Air Plan Approval; Indiana; Municipal Solid Waste Landfill State  
Plan Approval for Designated Facilities and Pollutants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Indiana's state plan to control air pollutants from Municipal Solid Waste (MSW) Landfills. The Indiana Department of Environmental Management (IDEM) submitted the state plan on March 20, 2023. The Indiana MSW landfill state plan was submitted to fulfill the state's obligations under section 111(d) of the Clean Air Act (CAA) to implement and enforce the requirements under the MSW Landfills Emission Guidelines. The EPA is proposing to approve the state plan.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2023-0283 at <https://www.regulations.gov>, or via email to [hulting.melissa@epa.gov](mailto:hulting.melissa@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sieffert, Clean Air Strategies Section, Air Toxics Branch (AT-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-1151, [sieffert.margaret@epa.gov](mailto:sieffert.margaret@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

## **I. Background.**

Section 111 of the CAA, "Standards of Performance for New

Stationary Sources," directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as New Source Performance Standards (NSPS). Section 111(b) directs EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish NSPS within these categories. Section 111(b)(1)(B) applies to new sources. Section 111(d) addresses the process by which the EPA and states regulate standards of performance for existing sources belonging to those categories established in section 111(b). When NSPS are promulgated for new sources, section 111(d) and EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. While NSPS are directly applicable to new sources, EGs for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA.

State plan submittal and revisions under CAA section 111(d) must be consistent with the applicable EG and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A. The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans under CAA section 111(d). Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state.

Once approved by the EPA, the state plan becomes federally enforceable. If a State does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a Federal plan.

The MSW landfills NSPS for new landfills and EG for existing landfills were first promulgated by the EPA on March 12, 1996, in 40 CFR part 60, subparts WWW and Cc, respectively (61 FR 9905). On August 29, 2016, EPA finalized revisions to the MSW landfill NSPS and EG in 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59332; 81 FR 59313). The 2016 EG revision updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources.

The current MSW landfill EG, found at 40 CFR part 60, subpart Cf, pertains to the regulation of landfill gas and its components, including methane, from MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. Pursuant to section 111(d) of the CAA and 40 CFR part 60, subpart B, states are required to revise their state plans to comply with the amended regulations. On May 21, 2021, EPA finalized the MSW landfill federal plan in 40 CFR part 62, subpart OOO (86 FR 27756). EPA issued technical amendments on February 3, 2022 for both the NSPS in 40 CFR part 60 subpart XXX and the federal plan in 40 CFR part 62, subpart OOO (87 FR 8202). The MSW landfill federal plan at 40 CFR part 62, subpart OOO, applies to states that do not have an EPA-

approved state plan based on 40 CFR part 60 subpart Cf.

Therefore, the MSW landfill federal plan is currently in effect in Indiana.

IDEM submitted a MSW landfill state plan on September 30, 1999. EPA approved the state plan and it became effective on May 30, 2000 (65 FR 1632). In order to fulfill obligations under CAA section 111(d) to submit a revised state plan to reflect amendments to the MSW landfill EG, IDEM submitted a revised MSW landfill state plan on March 20, 2023. IDEM incorporated by reference the federal plan located at 40 CFR part 62, subpart 000 to use as the underlying rule which implements and enforces the applicable provisions under the MSW landfill EG at 40 CFR part 60, subpart Cf. For the reasons discussed below, EPA believes that the Indiana MSW landfill state plan meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B and 40 CFR part 60, subpart Cf.

## **II. What does the State Plan Contain and What is EPA's**

### **Analysis?**

EPA has evaluated the Indiana MSW landfill state plan to determine whether the state plan meets applicable requirements from the MSW landfills EG at 40 CFR part 60, subpart Cf, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. EPA's detailed rationale and discussion on the Indiana MSW landfill state plan can be found in the EPA Technical Support Document (TSD), located in the docket for this

rulemaking. The applicable provisions and EPA's analysis are briefly summarized below.

- A. A demonstration of the state's legal authority to carry out the MSW landfill state plan as required by 40 CFR 60.26. IDEM has provided a detailed list which demonstrated that it has such legal authority.
- B. Identification of enforceable state mechanisms that the State selected for implementing the EGs as required by 40 CFR 60.24. IDEM has incorporated by reference the federal plan at 40 CFR part 62, subpart 000 as its state rule into the Indiana Administrative Code (IAC) via Article 326 IAC 8-8.2. EPA retains the authorities listed in 40 CFR 62.16710(b) that are not delegable to state, local or Tribal agencies. If a design plan includes alternative requests as listed as non-delegable under 40 CFR 62.16710(b), IDEM must forward to EPA for review and approval prior to approving.
- C. An inventory of affected MSW landfills, including those that have ceased operation but have not been dismantled as required by 40 CFR 60.25(a). IDEM has provided this.
- D. An inventory of the emissions from affected MSW landfills as required by 40 CFR 60.25(a). IDEM has provided this.
- E. Emission limitations for affected MSW Landfills that are at least as protective as the EGs as required by 60.24(c). IDEM references the emission limitations contained in 40 CFR 62 subpart 000, which are consistent with the

provisions of 40 CFR 60 Subpart Cf.

- F. Compliance schedules for each affected MSW landfills as required by 60.24(e)(1). IDEM references the compliance schedules contained in 40 CFR 62 subpart 000, which are consistent with the provisions of 40 CFR 60 subpart Cf.
- G. Performance testing, recordkeeping and reporting requirements as required by 60.25. IDEM references the performance testing, recordkeeping and reporting requirements contained in 40 CFR 62 subpart 000, which are consistent with the provisions of 40 CFR 60 subpart Cf.
- H. Certification that the hearing on the state plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission as required by 40 CFR 60.23. IDEM received approval on November 15, 2022, for an alternative public hearing request and adhered to this alternative.
- I. A provision for state progress reports to EPA as required by 40 CFR 61.25(e) and (f). IDEM commits to submitting annual progress reports to EPA. Each progress report will include: enforcement actions, achievement of increments of progress, identification of sources that have ceased operation, emission inventory updates, and copies of technical reports on all emission testing, including concurrent process data.

### **III. Does the State Plan Meet the EPA Requirements?**

The Indiana MSW landfill state plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR part 60, subpart B and 40 CFR part 60, subpart Cf. EPA evaluated the Indiana MSW Landfill state plan and related information submitted by IDEM for consistency with the CAA, EPA regulations and policy. The Indiana MSW landfill state plan has been evaluated in detail, as described more fully in the TSD. For the reasons discussed above and in the TSD, EPA has determined that the state plan meets all applicable requirements and, therefore, is approving it.

#### **IV. What Action is EPA Taking?**

EPA is proposing to approve the state plan which IDEM submitted on March 20, 2023, for the control of emissions from existing MSW landfill sources in the State and to amend 40 CFR part 62, subpart P, to codify EPA's approval. EPA is proposing to find that the Indiana MSW landfill state plan is at least as protective as the federal requirements provided under the MSW landfill EG, codified at 40 CFR part 60, subpart Cf. Once approved by EPA, the Indiana MSW landfill state plan will become federally enforceable.

#### **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. § 7411(d); 42 U.S.C. § 7429; 40 CFR part 60, subparts B and Cf;



and 40 CFR part 62, subparts A and 000. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the CAA section 111(d) submission is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks,

including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

IDEM did not evaluate environmental justice considerations as part of its 111(d) state plan submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: July 13, 2023.

**Debra Shore,**  
*Regional Administrator, Region 5.*